



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/920,231	08/01/2001	Rick Meritt	124571-1000	5303

7590 03/27/2003
Thomas C. Wright
GARDERE WYNNE SEWELL LLP
1601 Elm Street, Suite 3000
Dallas, TX 75201

EXAMINER

PIASCIK, SUSAN L

ART UNIT	PAPER NUMBER
----------	--------------

3643

DATE MAILED: 03/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/920,231

Applicant(s)

MERITT, RICK

Examiner

Susan L Piascik

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-8 and 14-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-8 and 14-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 1, 3-8 and 14-22 have been considered. The Examiner has modified the rejections yet still finds the Applicant's invention to lack novelty.

The Examiner still finds the O'Malley reference to be the most pertinent prior art reference. The O'Malley et al. reference teaches an animal feeder meeting the structural limitations of: a feed hopper, an access door, a feeding end, a filling end, at least three legs, and a skid assembly. The Examiner recognizes that the lid found on the O'Malley access door cannot be construed as "breathable." Therefore, a new reference has been cited that teaches this limitation.

In response to the Applicant's argument that there is no suggestion to combine the references, the Examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiya*, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. *In re McLaughlin*, 170 USPQ 209 (CCPA 1971). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 USPQ 545 (CCPA 1969). The Examiner uses the Smeester reference to teach a mesh cage surrounding the feeder. These cages are found throughout the feeder art in order to ensure that unwanted animals are denied access to the food. These cages surround bird feeders and livestock feeders and would have been obvious to include

Art Unit: 3643

on the Applicant's invention in light of the prior art. Further, the Examiner uses the Dubbert et al. reference to teach a ladder and platform used for accessing the top end of a storage silo which is very similar to the Applicant's feeder. It is well known that ladders can be used when the height of an apparatus is out of range for a typical human to reach. Therefore, it would once again be obvious for a skilled worker to modify the Applicant's invention with a ladder and platform.

In response to the Applicant's argument that the Examiner's conclusion of the obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill in the art at the time the claimed invention was made and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. (*In re McLaughlin*, 443 F.2d 1392; 170 USPQ 209 (CCPA 1971))

In conclusion, the Examiner finds the Applicant's invention to be obvious to one having ordinary skill in the art at the time of the invention given the prior art of record.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3643

Claim 1, 7-8 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Malley et al. in view of Bartis.

In regards to **claim 1**, O'Malley et al. disclose an animal feeder (10) comprising a feed hopper (16) having a filling end and a feeding end. The feeder (10) has three or more legs (33, 34, 37, 38) wherein the proximate ends of the legs (33, 34, 37, 38) are permanently attached to the feed hopper (16). A skid assembly (12, 14) is permanently attached to the distal ends of the three or more legs (33, 34, 37, 38). O'Malley et al. teach an access door (72, 73) having a lid for opening and closing the door. However, O'Malley et al. fail to teach a hinged, breathable lid. Bartis teaches a storage tank having an access door (18) having a lid (68) that is hinged (See Figure 2) and has at least one recess (56) to enable the lid to be breathable. Therefore, one having ordinary skill in the art would have found it obvious to modify the lid of O'Malley, to include hinges and recesses, as taught by Bartis, so that vapors from within the tank can be vented to the atmosphere without exposing the contents of the feeder to the outside elements.

Regarding **claim 7**, O'Malley et al., as modified, disclose an animal feeder (10) wherein the skid assembly (12, 14) is releasably attached to a vehicle.

In regards to **claim 8**, O'Malley et al., as modified, disclose an animal feeder (10) wherein feed is distributed by gravity from the feeding end of the feed hopper (16).

In regards to **claim 22**, O'Malley et al. disclose an animal feeder (10) comprising a feed hopper (16) having a filling end and a feeding end. The feeder (10) has at least three legs (33, 34, 37, 38) wherein the proximate ends of the legs (33, 34, 37, 38) are permanently attached to the feed hopper (16). A skid assembly (12, 14) is permanently attached to the distal ends of the

Art Unit: 3643

three or more legs (33, 34, 37, 38). O'Malley et al. teach an access door (72, 73) having a lid for opening and closing the door. However, O'Malley et al. fail to teach a breathable lid. Bartis teaches a storage tank having an access door (18) having a breathable lid (68) for opening and closing off the opening of the access door (18). Therefore, one having ordinary skill in the art would have found it obvious to modify the lid of O'Malley, so that it is breathable, as taught by Bartis, so that vapors from within the tank can be vented to the atmosphere without exposing the contents of the feeder to the outside elements.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Malley in view of Bartis and further in view of Smeester.

In regards to **claim 3**, O'Malley et al., as modified, disclose the claimed invention except for specifying the hopper to have a protective cage. However, Smeester teaches an animal feeder (10) wherein the feeding end of the hopper (72) has a protective cage (118). Therefore, one having ordinary skill in the art at the time of the invention would have found it obvious to modify the animal feeder taught by O'Malley to include a cage surrounding it, as taught by Smeester, so that the feeding end of the hopper is protected from certain species of animals and also from structural damage while animals are feeding.

Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Malley in view of Bartis and further in view of Dubbert et al.

In regards to **claim 4**, O'Malley et al., as modified, fails to teach a ladder for accessing the filling end of the feeder. However, Dubbert et al. teach a similar feeder system having a

Art Unit: 3643

ladder (37) for accessing the filling end (13) of the feed hopper. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the feeder disclosed by O'Malley et al, as modified, to include a ladder, as taught by Dubbert et al., so that a person can easily reach the filling end of the feeder.

In regards to **claim 5**, O'Malley et al., as modified in the previous claim, teach an animal feeder further comprising a platform (43 – Dubbert et al.) for accessing the filling end of the feed hopper.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Malley in view of Bartis and further in view of Hill et al.

In regards to **claim 6**, O'Malley et al., as modified, teach the claimed invention except for specifying the feed hopper to be constructed from plate steel. O'Malley merely specifies that the feeder is made from an "all metal construction" (column 1, line 64). However, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Further, as disclosed in the Hill et al. reference, which teaches an outdoor animal enclosure, plate steel is good selection for outdoor structures since it is sturdy, easily transported and weather resistant (column 4, lines 22-32). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to construct the hopper from plate steel considering the relevant material properties.

Art Unit: 3643

Claim 14-15 and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Malley.

In regards to **claim 14**, O'Malley et al. disclose a wildlife feeder (10) comprising a feed hopper (16) having a filling end and a feeding end. The feeder (10) has four legs (33, 34, 37, 38) wherein the proximate ends of the legs (33, 34, 37, 38) are permanently attached to the feed hopper (16). A skid assembly (12, 14) is permanently attached to the distal ends of the four legs (33, 34, 37, 38). Though O'Malley et al. fail to specifically teach a "one-piece" wildlife feeder, it would have been obvious to one having ordinary skill in the art to permanently attach the pieces of the feeder, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art.

(*Howard v. Detroit Stove Works*, 150 U.S. 164 (1893))

In regards to **claim 15**, O'Malley et al., as modified, disclose a feeder (10) wherein the filling end of the feed hopper (16) has a cover (58) having an access door (72, 73). O'Malley et al. fail to teach a breathable lid on the access door. However, Bartis teaches a storage tank having an access door (18) having a lid (68) that is breathable (56). Therefore, one having ordinary skill in the art would have found it obvious to modify the lid of O'Malley, so that it is breathable, as taught by Bartis, so that vapors from within the tank can be vented to the atmosphere without exposing the contents of the feeder to the outside elements.

Regarding **claim 20**, O'Malley et al., as modified, disclose a feeder (10) wherein the skid assembly (12, 14) is releasably attached to a vehicle.

In regards to **claim 21**, O'Malley et al., as modified, disclose a feeder (10) wherein feed is distributed by gravity from the feeding end of the feed hopper (16).

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Malley in view in view of Smeester.

In regards to **claim 16**, O'Malley et al., as modified, disclose the claimed invention except for specifying the hopper to have a protective cage. However, Smeester teaches an animal feeder (10) wherein the feeding end of the hopper (72) has a protective cage (118) permanently attached. Therefore, one having ordinary skill in the art at the time of the invention would have found it obvious to modify the animal feeder taught by O'Malley to include a permanent cage surrounding it, as taught by Smeester, so that the feeding end of the hopper is protected from certain species of animals and also from structural damage while animals are feeding.

Claims 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Malley in view of Dubbert et al.

In regards to **claim 17**, O'Malley et al., as modified, fail to teach a ladder for accessing the filling end of the feeder. However, Dubbert et al. teach a similar feeder system having a ladder (37) for accessing the filling end (13) of the feed hopper. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the feeder disclosed by O'Malley et al, as modified, to include a ladder, as taught by Dubbert et al., so that a person can easily reach the filling end of the feeder.

Art Unit: 3643

In regards to **claim 18**, O'Malley et al., as modified in the previous claim, teach an animal feeder further comprising a platform (43 – Dubbert et al.) for accessing the filling end of the feed hopper.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Malley in view of Hill et al.

In regards to **claim 19**, O'Malley et al., as modified, teach the claimed invention except for specifying the feed hopper to be constructed from plate steel. O'Malley merely specifies that the feeder is made from an “all metal construction” (column 1, line 64). However, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Further, as disclosed in the Hill et al. reference, which teaches an outdoor animal enclosure, plate steel is good selection for outdoor structures since it is sturdy, easily transported and weather resistant (column 4, lines 22-32). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to construct the hopper from plate steel considering the relevant material properties.

Citation of Relevant Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Art Unit: 3643

The following patents are cited to further show the state of art with respect to animal feeders:

U.S. Pat. No. 2,638,871 to Ruedemann

U.S. Pat. No. 4,328,880 to Lapeyre

U.S. Pat. No. 5,275,131 to Brake et al.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan L Piascik whose telephone number is (703)305-0299. The examiner can normally be reached on M-F (8:00-5:30) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (703)308-2574. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-7687 for regular communications and (703)305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-7687.

slp
March 21, 2003



PETER M. POON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600